

TERMS & CONDITIONS

The terms and conditions set out below will apply to the sale of goods and any credit extended by A. R. Medicom (Australia) Pty Ltd ABN 45 164 256 633 (Medicom) (Terms & Conditions) to the customer and the signed Credit Application will be evidence of the Customer's agreement to these Terms & Conditions.

- 1. Definitions**
 - 1.1 **Application** means the Credit Application completed and signed by the customer including the terms of any guarantee and attached to these Terms & Conditions.
 - 1.2 **CCA** means the *Competition and Consumer Act 2010* (Cth) as amended;
 - 1.3 **Customer** means the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any Application or other form as provided by Medicom to the Customer;
 - 1.4 **Guarantor** means that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis as set out in the Application;
 - 1.5 **Goods** mean all Goods supplied by Medicom to the Customer and are as described on the invoices, quotation, work authorisation or any other forms as provided by Medicom to the Customer;
 - 1.6 **parties** means the Customer, Medicom or the Guarantor and **party** means any of them;
 - 1.7 **PPSA** means the *Personal Property Securities Act 2009* (Cth) as amended;
 - 1.8 **PPSR** means the Personal Property Securities Register;
 - 1.9 **Price** means the Price payable for the Goods as agreed between Medicom and the Customer in accordance with clause 3 of the Terms & Conditions;
 - 1.10 **Medicom** means A.R. Medicom (Australia) Pty Ltd ABN 45 164 256 633 its successors and assigns or any person acting on behalf of and with the authority of Medicom.
- 2. Acceptance**
 - 2.1 The Customer acknowledges that the supply of Goods on credit will not take effect until the Customer has completed the Application with Medicom and it has been approved with a credit limit established for the account.
 - 2.2 In the event that any supply of Goods request exceeds the Customer's credit limit and/or the account exceeds the payment terms, Medicom reserves the right to refuse delivery.
 - 2.3 Any instructions received by Medicom from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by Medicom will constitute acceptance of the Terms & Conditions.
 - 2.4 Where more than one (1) Customer has completed and signed the Application with these Terms & Conditions, each Customer will be jointly and severally liable for all payments of the Price and any other monies payable pursuant to the Terms & Conditions.
 - 2.5 Upon acceptance of these Terms & Conditions by the Customer the Terms & Conditions are binding and can only be amended with the written consent of Medicom or as set out in these Terms & Conditions.
 - 2.6 The Customer will give Medicom not less than thirty (30) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, email address or business practice). The Customer will be liable for any loss incurred by Medicom as a result of the Customer's failure to comply with this clause.
 - 2.7 Goods are supplied by Medicom only on the Terms & Conditions to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these Terms & Conditions.
 - 2.8 The Customer must give Medicom not less than ninety (90) days prior written notice should the Customer wish to cancel the credit account established in accordance with these terms and conditions.
 - 2.9 The Customer acknowledges that Medicom may order from its suppliers on behalf of a Customer stock or goods which are outside the normal stock or goods held by Medicom (**special order**) and that any breach of clause 2.8 may result in the Customer being liable to pay the Price for such stock or goods ordered, produced or in production by Medicom at the sole discretion of Medicom.
- 3. Order**
 - 3.1 Any order received by Medicom from the Customer must be in writing or such format required by Medicom form time to time and specify the following:
 - 3.1.1 the date of the order;
 - 3.1.2 particulars of the Goods ordered;
 - 3.1.3 the preferred place for delivery;
 - 3.1.4 the Price of the Goods; and
 - 3.1.5 any other information which Medicom may reasonably request the Customer to provide from time to time.
 - 3.2 Medicom may decline any order received from the Customer in writing within three (3) business days of receipt of the order at Medicom's sole discretion. Any order not declined pursuant to this clause shall be deemed accepted by Medicom.
 - 3.3 Any order placed by the Customer cannot be varied or withdrawn without prior written consent from Medicom.
 - 3.4 The Customer acknowledges and agrees that where Medicom is required to make a special order on behalf of the Customer, the Customer will not be permitted to cancel the special order and will be liable in all respects for that order unless otherwise agreed with Medicom.
- 4. Price and Payment**
 - 4.1 At Medicom's sole discretion the Price will be either:
 - 4.1.1 as indicated on invoices provided by Medicom to the Customer in respect of Goods supplied; or
 - 4.1.2 Medicom's current price at the date of delivery of the Goods according to Medicom's current price list.
 - 4.2 Medicom will provide a copy of the price list if requested by the Customer. All prices published in the price list are subject to alteration or withdrawal by Medicom without notice.
 - 4.3 Medicom may request payment by the Customer of a non-refundable deposit prior to the supply or delivery of the Goods.
 - 4.4 Medicom may, in its sole discretion, require payment of the Price by the Customer either prior to or on delivery of the Goods
 - 4.5 Time for payment for the Goods will be of the essence and will be stated on the date the invoice for the supply of the Goods by Medicom to the Customer. If no time is stated then payment of an invoice will be due thirty (30) days from the date the invoice was issued.
 - 4.6 Payment of the Price must be made by cash, bank cheque, credit card, direct credit, or by any other method as agreed to between the Customer and Medicom. Any payment of the Price by credit card will incur a surcharge of up to one percent (1%) of the Price.
 - 4.7 Unless otherwise stated, GST and other taxes and duties that may be applicable will be added to the Price except when they are expressly included in the Price.
- 5. Delivery of Goods**
 - 5.1 At Medicom's sole discretion delivery of the Goods will take place when:
 - 5.1.1 the Customer takes possession of the Goods at Medicom's address; or
 - 5.1.2 the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by Medicom or Medicom's nominated carrier); or
 - 5.1.3 the Customer's nominated carrier takes possession of the Goods in which event the carrier will be deemed to be the Customer's agent.
 - 5.2 At Medicom's sole discretion the costs of delivery are:
 - 5.2.1 in addition to the Price; or
 - 5.2.2 included in the Price; or
 - 5.2.3 for the Customer's account;and Medicom will advise the Customer of the costs of delivery. Please cross check with Medicom's MOQ for free delivery and freight table from time to time.
 - 5.3 The Customer will make all arrangements necessary to take delivery of the Goods whenever they are tendered by Medicom for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged, Medicom will be entitled to charge a reasonable fee for redelivery.
 - 5.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of these Terms & Conditions.
 - 5.5 Medicom may, in its sole discretion, deliver the Goods by separate installments. Each separate installment will be invoiced by Medicom and paid by the Customer in accordance with these Terms & Conditions.
 - 5.6 The Customer will take delivery of the Goods tendered notwithstanding that the quantity so delivered will be either greater or lesser than the quantity purchased provided that:
 - 5.6.1 such discrepancy in quantity will not exceed five percent (5%); and
 - 5.6.2 the Price will be adjusted pro rata to the discrepancy.
 - 5.7 Where the Customer expressly requests Medicom to either:
 - 5.7.1 leave Goods outside Medicom's nominated business premises for collection; or
 - 5.7.2 to deliver the Goods to an unattended location,such Goods will be left at the nominated location at the Customer's sole risk.
 - 5.8 The failure of Medicom to deliver will not entitle either party to treat these Terms & Conditions as repudiated.
 - 5.9 Medicom will not be liable for any loss or damage whatsoever due to failure by Medicom to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Medicom.
 - 5.10 In the case where there is redelivery fee and or tailgate fee from the Medicom designated courier companies, Medicom reserves the right to be reimbursed for such reasonable cost.
- 6. Title**
 - 6.1 Medicom and the Customer agree that ownership of the Goods will not pass until:
 - 6.1.1 the Customer has paid Medicom all amounts owing for the particular Goods; and
 - 6.1.2 the Customer has met all other obligations due by the Customer to Medicom in respect of all contracts between Medicom and the Customer.
 - 6.2 Medicom's title or rights in the Goods will continue until any form of payment by a Customer for the Goods has been received, honoured, cleared or acknowledged by Medicom.
 - 6.3 The parties acknowledge and agree as follows:
 - 6.3.1 where practicable the Goods will be kept separate and identifiable until Medicom has received payment and all other obligations of the Customer are met;
 - 6.3.2 until such time as ownership of the Goods passes from Medicom to the Customer, Medicom may give notice in writing to the Customer to return the Goods or any of them to Medicom. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods will cease;
 - 6.3.3 Medicom will have the right of stopping the Goods in transit whether or not delivery has been made;
 - 6.3.4 if the Customer fails to return the Goods to Medicom then Medicom or Medicom's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods;
 - 6.3.5 the Customer is only a bailee of the Goods and until such time as Medicom has received payment in full for the Goods then the Customer will hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to Medicom for the Goods, on trust for Medicom;
 - 6.3.6 the Customer will not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Medicom; and
 - 6.3.7 Medicom may issue proceedings to recover the Price of the Goods sold notwithstanding that title to the Goods may not have passed to the Customer; and
 - 6.3.8 until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that Medicom will be the owner of the end products.
- 7. Risk**
 - 7.1 Notwithstanding clause 6, all risk for the Goods passes to the Customer on delivery of the Goods in accordance with these Terms & Conditions.
 - 7.2 If any of the Goods are damaged or destroyed following delivery but prior to title passing to the Customer, Medicom is entitled to receive all insurance proceeds payable for the Goods. The Customer will be liable for any claim processing fee.
 - 7.3 The production of these Terms & Conditions by Medicom is sufficient evidence of Medicom's rights to receive the insurance proceeds without the need for any person dealing with Medicom to make further enquiries.
- 8. CCA**
 - 8.1 Subject to Medicom's statutory obligations under the CCA the following provisions apply:
 - 8.1.1 Medicom's liability for a breach of a condition or warranty implied by Pt 3-2 Div 1 of the CCA is limited to:
 - (i) in the case of goods, any one (1) or more of the following:
 - (A) the replacement of the Goods or the supply of equivalent goods;
 - (B) the repair of the Goods;
 - (C) the payment of the cost of replacing the Goods or of acquiring equivalent goods;
 - (D) the payment of the cost of having the Goods repaired; or
 - (ii) in the case of services:
 - (A) the supplying of the services again; or
 - (B) the payment of the cost of having the services supplied again.
 - 8.1.2 Subject to Medicom's statutory obligations under the CCA and except as provided in these Terms & Conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded.
 - 8.1.3 Medicom is not liable to the Customer for any physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of and Good or arising out of our negligence or in any way whatsoever.
 - 8.1.4 Medicom's liability under s274 of the CCA is expressly limited to a liability to pay the Customer an amount equal to:

- (i) the cost of replacing the Goods;
- (ii) the cost of obtaining equivalent Goods; or
- (iii) the cost of having the Goods repaired, whichever is the lowest amount.

9. PPSA

9.1 In this clause:

- 9.1.1 **financing statement** has the meaning given to it by the PPSA;
- 9.1.2 **financing change statement** has the meaning given to it by the PPSA;
- 9.1.3 **security agreement** means the security agreement under the PPSA created between the Customer and Medicom by these Terms & Conditions; and
- 9.1.4 **security interest** has the meaning given to it by the PPSA.

9.2 Upon assenting to these Terms & Conditions in writing the Customer acknowledges and agrees that these Terms & Conditions:

- 9.2.1 constitute a security agreement for the purposes of the PPSA; and
- 9.2.2 create a security interest in:
 - 9.2.2.1 all Goods previously supplied by Medicom to the Customer (if any);
 - 9.2.2.2 all Goods that will be supplied in the future by Medicom to the Customer.

9.3 The Customer undertakes to:

- 9.3.1 promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Medicom may reasonably require to:
 - 9.3.1.1 register a financing statement or financing change statement in relation to a security interest on the PPSR;
 - 9.3.1.2 register any other document required to be registered by the PPSA; or
 - 9.3.1.3 correct a defect in a statement referred to in clause 9.3.1.1 or clause 9.3.1.2;
- 9.3.2 indemnify, and upon demand reimburse, Medicom for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Goods charged thereby;
- 9.3.3 not register a financing change statement in respect of a security interest without the prior written consent of Medicom;
- 9.3.4 not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Medicom; and
- 9.3.5 immediately advise Medicom of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

9.4 Medicom and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms & Conditions.

9.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

9.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

9.7 Unless otherwise agreed to in writing by Medicom, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

9.8 The Customer will unconditionally ratify any actions taken by Medicom under clause 9.3, clause 9.4 and clause 9.5.

10. Warranties

10.1 To the extent permitted by law, Medicom does not warrant the following:

- 10.1.1 any of the Goods that are not manufactured by Medicom, and in such case the Customer will only have the benefit of the warranty (if any) of the manufacturer of those Goods which forms part of the contract between Medicom and the manufacturer; or
- 10.1.2 defects or deterioration which, in the opinion of Medicom, have been caused by careless or improper handling, negligence, misuse, non-adherence to operating, cleaning, care or maintenance instructions, or by fair wear and tear.

10.2 The Customer acknowledges and agrees that they have had the opportunity to review the variety of Goods offered by Medicom together with their specifications and quality and that unless specifically stated otherwise, that the Good is fit for use. Medicom will not be liable to the Customer in any way for any costs, damage or loss of any kind whatsoever (including, without limitation, liability for direct, indirect, special or consequential loss or damage) incurred or sustained by the Customer or any third party arising from or in connection with the Goods and any damage caused.

10.3 Where Regulation 90 of the Australian Consumer Law applies in respect of any warranty for defects, the Customer can, at its cost, contact Medicom at 5 Yulong Close, Moorebank NSW 2170, on 1300 818 168 or on email at cs@medicom-australia.com.au and provide Medicom with details of the Good, a description of the defect, the Customer's details and proof of purchase. Medicom will then process and advise the Customer on its claim in a timely manner. Medicom will make, at its own discretion, an election to either replace or repair the Goods.

10.4 Medicom does not have to repair or replace a Good under a warranty of Medicom if the Good has been modified, disassembled, misused, improperly or inappropriately installed, operated or repaired, abused, damaged or not maintained in accordance with the manufacturer's instructions.

10.5 Where applicable:

Medicom's goods come with guarantees that cannot be excluded under the Australia Consumer Law. You are entitled to a replacement or refund for major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does amount to a major failure. The benefits under the warranty are in addition to other rights you may have at law.

10.6 For the purpose of making any claim under this clause 10, the Customer must:

- 10.6.1 immediately upon becoming aware of circumstances giving rise to a claim, notify Medicom in writing setting out full details of the claim;
- 10.6.2 provide Medicom with proof of purchase of the Goods in relation to which the claim is made; and
- 10.6.3 allow Medicom, its employees and/or agents full and free access to the Goods in relation to which the claim is made and to the place where the Goods are located for the purpose of conducting any inspection and tests that Medicom may in its absolute discretion consider necessary to determine whether the claim is justified or not.

10.7 Where a Good or any part of a Good is not manufactured by Medicom, Medicom will use all reasonable endeavours to assign to the Customer the benefit of any warranty in respect of that part of the Good.

10.8 Any warranty of Medicom cannot be assigned or transferred to any third party.

11. Defects

11.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Medicom of any alleged defect, shortage in quantity, damage or failure to comply with the description.

11.2 The Customer shall afford Medicom an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way.

11.3 If the Customer shall fail to comply with this clause the Goods shall be presumed to be free from any defect or damage.

11.4 For defective Goods, which Medicom has agreed in writing that the Customer is entitled to reject, the Medicom's liability is limited to either (at Medicom's discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the CCA or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods (as set out in clause 8).

12. Returns

12.1 Returns of a Good will only be accepted provided that:

- 12.1.1 the Customer has complied with the Terms & Conditions; and
- 12.1.2 Medicom has agreed in writing to accept the return of the Goods; and
- 12.1.3 the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
- 12.1.4 Restocking fee of 10% will be applicable to the customer; and
- 12.1.5 the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

12.2 Medicom will not be liable for Goods which have not been stored or used in a proper manner.

12.3 Medicom will not accept the return of Goods for credit unless otherwise agreed.

12.4 Goods ordered by Medicom as a special order are under no circumstances acceptable for credit or return.

13. Default

13.1 Interest on overdue invoices will accrue daily from the date when payment becomes due, until the date of payment, at a rate of fifteen percent (15%) per annum (and at Medicom's sole discretion such interest will compound monthly) after as well as before any judgment.

13.2 In the event that the Customer's payment is dishonoured for any reason, the Customer will be liable for any dishonour fees incurred by Medicom.

13.3 If the Customer defaults in payment of any invoice when due, the Customer will indemnify Medicom from and against all costs and disbursements incurred by Medicom in pursuing the debt including legal costs on a solicitor and own Customer basis and Medicom's collection agency costs.

13.4 Without prejudice to any other remedies Medicom may have, if at any time the Customer is in breach of any obligation (including those relating to payment) Medicom may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the Terms & Conditions. Medicom will not be liable to the Customer for any loss or damage the Customer suffers because Medicom has exercised its rights under this clause.

13.5 Without prejudice to Medicom's other remedies at law, Medicom will be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Medicom will, whether or not due for payment, become immediately payable in the event that:

- 13.5.1 any money payable by the Customer to Medicom becomes overdue, or in Medicom's opinion, the Customer will be unable to meet its payments as they fall due; or
- 13.5.2 the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- 13.5.3 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

14. Cancellation

14.1 Medicom may cancel any order to which these Terms & Conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Medicom will repay to the Customer any sums paid in respect of the Price. Medicom will not be liable for any loss or damage whatsoever arising from such cancellation.

14.2 In the event that the Customer cancels delivery of Goods, the Customer will be liable for any loss incurred by Medicom (including, but not limited to, any loss of profits) up to the time of cancellation.

15. Privacy Act 1988

15.1 The Customer all Guarantors acknowledge and agree that:

- 15.1.1 the Medicom's Privacy Policy (as may be amended from time to time) is available upon request; and
- 15.1.2 the Customer and the Guarantors have familiarised themselves with the terms of this policy.

16. General

16.1 If:

- 16.1.1 any provision of these Terms & Conditions will be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired;
- 16.1.2 any provisions of these Terms & Conditions are inconsistent with the PPSA, the PPSA will prevail to the extent of that inconsistency.

16.2 These Terms & Conditions and any contract to which they apply will be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.

16.3 To the extent permitted by law:

- 16.3.1 Medicom will be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Medicom of these Terms & Conditions;
- 16.3.2 In the event of any breach of this contract by Medicom the remedies of the Customer will be limited to damages which under no circumstances will exceed the Price of the Goods.

16.4 The Customer will not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Medicom nor to withhold payment of any invoice because part of that invoice is in dispute.

16.5 Medicom may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

16.6 The Customer agrees that Medicom may review these Terms & Conditions at any time. If, following any such review, there is to be any change to these Terms & Conditions, then that change will take effect from the date on which Medicom notifies the Customer of such change. The Customer will be under no obligation to accept such changes except where Medicom supplies further Goods to the Customer and the Customer accepts such Goods.

16.7 Neither party will be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

16.8 The failure by Medicom to enforce any provision of these Terms & Conditions will not be treated as a waiver of that provision, nor will it affect Medicom's right to subsequently enforce that provision.

16.9 The Customer acknowledges that Medicom may assign any amount owed by the Customer to Medicom.